

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Emergency Alert System)	EB Docket No. 04-296
_____)	

COMMENTS OF SIRIUS SATELLITE RADIO INC.

Sirius Satellite Radio Inc. (“Sirius”), by its attorneys, comments in support of XM Radio Inc.’s (“XM”) Petition for Partial Reconsideration and Clarification¹ of the Federal Communications Commission’s (“FCC” or “Commission”) November 10, 2005, First Report and Order in this proceeding.² Satellite digital audio radio service (“Satellite DARS”) is an increasingly important distribution mechanism for emergency information and Sirius is fully committed to fulfilling its emergency alerting obligations through participation in the Emergency Alert System (“EAS”), to the extent possible.³

Sirius is one of two Satellite DARS providers. Sirius currently transmits over 120 channels to its subscribers nationwide. This programming includes a wide variety of music, sports, news, talk, and weather channels. Sirius does not, and cannot, transmit programming on a local or regional basis. Instead, all of Sirius’ subscribers, regardless of location, receive

¹ Petition for Partial Reconsideration and Clarification, XM Radio Inc., EB Docket No. 04-296 (filed Dec. 27, 2005) (“*XM Petition*”).

² *Review of the Emergency Alert System*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18,625 (2005) (“*Order*”).

³ Comments of Sirius Satellite Radio Inc., EB Docket No. 04-296, at 2 (filed Oct. 29, 2004).

precisely the same programming. Sirius' subscribers access this programming through a variety of radios, including car, portable, and home units. All of these radios have a text box that displays the channel name and current programming.

Sirius currently provides its subscribers with emergency alerts and warnings through its operation of the Sirius Emergency System, which provides accurate, up to the minute disaster notification and survival information to subscribers.⁴ As part of this network, Sirius operates a National Weather and Emergency Channel dedicated to survival and evacuation reports and other emergency warning and alerts on Channel 184, and provides traffic and weather information for twenty of the largest metropolitan areas in the continental U.S. on 11 channels.

The Sirius emergency system monitors news wires and channels for events that require instant warning communications to subscribers. When an emergency worthy of communication to subscribers occurs, Sirius may interrupt music, traffic/weather, and/or news and information channels (at the first natural programming break), determined by the type and location of the alert or warning, to send a brief announcement identifying the events and directing subscribers to the emergency channel for further information.⁵

The Commission's First Report and Order mandates much of what Sirius voluntarily provides. However, the new rules further require Satellite DARS licensees to (1) conduct EAS

⁴ This system is managed by an award-winning journalist with 35 years of experience and staffed 24 hours a day, 365 days a year by a highly trained team of journalists and one former FEMA Information and Planning Section Chief. In addition to Sirius' local team of disaster communication experts, Sirius has contracted with The Weather Channel in Atlanta to automatically obtain urgent weather information in audio reports.

⁵ To date, this system has been utilized for a wide variety of hurricanes and other emergency situations. For example, during a blizzard in 2005, Sirius notified subscribers that Michigan State Police were asking stranded motorists to remain in their cars. Similarly, during Hurricane Katrina, Sirius stayed operational, continuously providing subscribers with updated emergency information. Moving forward, Sirius remains committed to ensuring its subscribers will have up to the minute, accurate information in emergency situations.

tests on all channels; (2) broadcast audio, as opposed to other, alerts; and (3) schedule tests on a weekly and monthly basis.⁶ As such, the EAS rules are onerous and unnecessary and impose more stringent testing requirements on Satellite DARS than on DBS, cable, and terrestrial radio broadcasting. Absent a strong public interest rationale to the contrary, however, the FCC must treat similarly situated entities similarly.⁷

Accordingly, as noted by XM,⁸ the FCC should modify its Satellite DARS emergency testing requirements to be commensurate with other EAS participants.

- DBS. Satellite DARS is most similar to the direct broadcast satellite service, both in terms of technology and regulation. Yet, the Order permits DBS licensees to test only monthly, and then on only 10 percent of their available channels. The agency explained that requiring a DBS provider to conduct its weekly and monthly test on all channels simultaneously would pose problems.⁹ Satellite DARS providers are no different.

While Sirius supports monthly testing on its regional traffic and weather channels,¹⁰ nationwide alerts requiring universal and immediate attention are extremely rare. Given the infrequency of national alerts, yearly system-wide testing will ensure proper distribution. As noted by XM, technological improvement makes weekly and monthly testing across all channels unnecessary, with potentially counter-productive effects on the audience.¹¹

- Terrestrial Radio Broadcasting. Though a subscription service, Satellite DARS also shares some characteristics with radio station multiple owners. The FCC allows radio broadcast licensees to schedule tests on a per station basis, despite common ownership. This flexibility allows broadcast licensees to schedule EAS tests without interrupting programming. By contrast, the new rules require Satellite DARS licensees to test all channels at the same time and thus to interrupt most transmissions

⁶ Order, ¶ 43. See also 47 C.F.R. § 11.61.

⁷ See *Melody Music v. FCC*, 345 F.2d 730, 732-33 (D.C. Cir. 1965) (requiring the FCC to explain its different treatment of two similar cases).

⁸ XM Petition at 7.

⁹ Order, ¶ 57.

¹⁰ Similarly, the FCC requires cable networks, which distribute a large number of local programming channels, to test on a monthly basis.

¹¹ XM Petition at 4-5.

because natural programming breaks are never simultaneous across all Sirius channels.

- Cable TV. The Report and Order allows cable television systems to test EAS via a video “crawl” that does not completely obscure the picture, with no or minimal suspension of sound.¹² Yet, despite sharing some of cable TV’s traits, the FCC insisted Satellite DARS licensees interrupt each audio stream, completely ignoring the text box prominently visible on every receiver.¹³ The Commission never explained why it would forbid analogous testing, which would be no less apparent to the public.¹⁴

Sirius already transmits national and regional alerts, and is committed to participating in upgraded EAS. But the rules governing the frequency of EAS testing are unnecessary, as evidenced by the obligations imposed on related offerings. Without rationale or explanation, the FCC cannot treat similarly situated entities differently.¹⁵ For these reasons, Sirius supports XM’s recommendation that the requirements for SDARS be modified to require licensees to perform (i) at least one test annually on all channels and (ii) monthly tests on Sirius’ National Weather And Emergency Channel and weather and traffic channels that provide subscribers with state and local emergency alerts and warnings. Sirius also urges the Commission to modify its rules to allow Satellite DARS providers to utilize an always-on text box to test its emergency alerting system and to notify subscribers of emergency alerts and warnings.

¹² See 47 C.F.R. § 11.51(h)(3) (providing that analog and digital cable systems with 5,000 or more subscribers must transmit the EAS visual message on all downstream channel but that this visual message may be in the form of a video crawl that does not interfere with other visual messages).

¹³ XM Petition at 6-7.

¹⁴ More specifically, Sirius could transmit a unique audible tone alerting subscribers to read the always-on text box. Such an approach would ensure near instantaneous alerts that Sirius’ emergency alerting system is operational while not causing significant interruptions to programming.

¹⁵ See *infra* n. 7.

Respectfully submitted,

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